

***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

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W.P. No.4849 of 2005

% 11.03.2005

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Between:

Musunuru Rajani W/o. M.V.N. Prasad, Hindu

Riyadh Kingdom of Saudi Arabia, Rep. by her power of Attorney Holder Smt. M.
Seethamahalakshmi W/o. Kunaiah, Hindu, aged about 67 yrs, R/o. Plot No.25,
Srikar Plaza Dairy Officer's Colony, Vijayawada-8.

.... APPELLANT

AND

Vijayawada Municipal Corporation, Rep. by its Commissioner, Vijayawada.

...RESPONDENT

Counsel for the Petitioner:MR.V.S.R.ANJANEYALU

Counsel for the Respondent : MR.T.S.VENKATA RAMANA

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> Head Note:

? CITATIONS:

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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 4849 of 2005

Between:

Musunuru Rajani W/o. M.V.N. Prasad, Hindu
Riyadh Kingdom of Saudi Arabia, Rep. by her power of Attorney Holder Smt. M.
Seethamahalakshmi W/o. Kunaiah, Hindu, aged about 67 yrs, R/o. Plot No.25,
Srikar Plaza Dairy Officer's Colony, Vijayawada-8.

..... PETITIONER

AND

Vijayawada Municipal Corporation, Rep. by its Commissioner, Vijayawada.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, particularly a writ of Mandamus, declaring the Proceedings bearing No. R.C.T.P.B.O.X/U.C.no. 32/04 dt. 1-3-2005 issued by the respondent as illegal and ultra vires to the provisions of Article 14 of the constitution of India and also the mandatory provisions of the Hyderabad Municipal Corporation Act and the A.P. Urban Areas (Development) Act 1975 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.V.S.R.ANJANEYALU

Counsel for the Respondent : MR.T.S.VENKATA RAMANA

The Court, at the stage of admission, made the following :

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ORDER:

Petitioner was accorded permission on 14.05.2004, to undertake construction in his premises in R.S.No. 362/2C1 of Gunadala Village, within the limits of Municipal Corporation of Vijayawada. When the construction was in progress, the respondent issued a notice dated 05.07.2004, under Section 452 of the Hyderabad Municipal Corporation Act (for short 'the Act') and Sections 42 and 43 of the A.P. Urban Areas (Development) Act, 1975, stating that the construction being undertaken is contrary to the sanctioned plan and G.O.Ms.No.423, Municipal Administration, dated 31.07.1998. The petitioner was directed to explain as to why action shall not be taken under the relevant provisions of law. The petitioner claims to have submitted an explanation dated 14.09.2004.

The respondent issued a notice dated 01.03.2005, under Section 636 of the Act, directing the petitioner to demolish the unauthorized structures raised by him, within twenty four hours from the receipt of notice. Petitioner challenges the same on several grounds, such as, non-consideration of the explanation, non-application of mind and vagueness in the notice issued under Section 452 of the Act etc.

Heard the learned counsel for the petitioner and the learned standing counsel for respondent.

It is not in dispute that the petitioner was accorded permission to construct in the

premises, referred to above. Notice, dated 05.07.2004, issued under Section 452 of the Act was served on the petitioner. The nature of violation, for which the notice was issued, is indicated as under:

“Contrary to the sanctioned plan and contrary to G.O.Ms.No.423 M.A.
dated 31.07.1998”

From this, it is very difficult to know or ascertain the nature of violations. The petitioner submitted an explanation on 14.09.2004, pointing out that the notice was issued by an authority not vested with the power and that it is too vague to be responded. No development has taken place thereafter. Nearly six months after the submission of the explanation, the respondent had issued a notice under Section 636 of the Act, requiring the petitioner to demolish the unauthorized structures.

Sections 452 and 636 of the Act empower the respondent to take necessary action, in case any construction is made either without permission or in deviation of the sanctioned plan. Since the action under the said provisions entails in demolition, the respondent is required to be specific and clear as to the nature of deviation. The deviation pointed out in the notice, dated 05.07.2004 does not accord with the scheme of the Act nor does it enable the respondent to take any action.

Whatever may have been the circumstances under which the notice dated 05.07.2004, was issued, the respondent ought to have applied its mind, once it received the explanation from the petitioner. It is rather surprising that there is hardly any improvement in the matter when the notice under Section 636 of the Act was issued. The petitioner was required to demolish ‘the unauthorized structures’ without indicating them. It is impossible for anyone to comply with the same, and at the same time the respondent would be at liberty to pull down the entire structure, on the basis of such vague and uncertain descriptions.

Therefore, the notice dated 01.03.2005 is set aside, and it is left open to the respondent to pass appropriate orders, duly taking into account the explanation submitted by the petitioner. It is also made clear that in case the respondent intends to be clear about the nature of deviations, it shall always be open to him to issue a revised notice under Section 452 of the Act.

Accordingly, the writ petition is allowed. There shall be no order as to costs.

(L.NARASIMHA REDDY,J)

Date: 11-03-2005

NOTE: L.R. copy to be marked.

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To

One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy, (for his lordships kind perusal)

1. The Commissioner, Vijayawada Municipal Corporation, Vijayawada.

2 8 L.R copies.

3 The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

4 The Secretary, A.P. Advocates Association, Library, High Court Buildings, Hyderabad.

5 2 CD copies.